

Purchase and Sale Agreement Commentary: Oil & Gas

by Margaret Welsh and C. Peck Hayne Jr., Gordon, Arata, Montgomery, Barnett, McCollam, Duplantis & Eagan, LLC, with Practical Law Oil & Gas

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A Practice Note discussing the key provisions in a purchase and sale agreement for selling and acquiring oil and gas assets. The provisions this Note examines include those that describe the assets and properties, state the purchase price, address title matters, and express the seller's representations and warranties.

Purchase and sale transactions in the oil and gas industry are most commonly structured as asset acquisitions rather than stock or equity acquisitions. The purchase and sale agreement (PSA) is the main transaction document in an oil and gas asset acquisition. This Note discusses the typical provisions in most oil and gas PSAs.

Many oil and gas companies have developed a standard PSA they prefer to use as the starting point for negotiations. Although PSAs may vary the order of provisions and each deal has unique terms, the provisions described in this Note are found in most oil and gas PSAs for significant transactions.

PSAs may be structured as a simultaneous sign and close, in which the transaction closes when the parties sign the agreement. Parties sometimes use this agreement type if any of the following factors exist:

- The transaction size is small.
- The buyer conducts all its due diligence before signing the PSA.
- They want a simpler and shorter PSA.

If the signing and closing of the PSA is simultaneous, many of the provisions discussed in this Note may be unnecessary, such as interim covenants, conditions to close, and termination rights.

If the transaction is a non-simultaneous sign and close, the parties first sign the PSA and then close at a later time.

For a general overview of the steps and considerations when entering into an oil and gas purchase and sale transaction, see [Practice Note, Oil & Gas Asset Acquisitions: Overview](#).

Preamble

The preamble follows the agreement's title. It identifies the execution date of the agreement and identifies and defines the parties to the agreement, including the entity type and state of formation of any party that is not a natural person.

If there is more than one buyer or one seller, the agreement should specify throughout whether a provision applies to one or more of the buyer or seller parties. For example, if multiple sellers are parties to the PSA, the representations and warranties should clearly state whether one seller is making representations and warranties for itself only or also for any other seller.

Recitals

The recitals set out basic background information about the deal. In a straightforward transaction, the recitals typically state that the seller owns and desires to sell the assets and that the buyer desires to purchase the assets, all according to the terms of the agreement. Any related transaction, prior agreement, or any other relevant information that provides background to the deal can be described in the recitals.

Definitions

Defined terms are a part of every PSA, and it is helpful to group the defined terms together for easier review of the agreement. They are commonly contained in one section of the agreement or as an annex incorporated into the agreement. The defined term section can either include the listed term's definition or refer to the section of the agreement that contains the definition.



Although some defined terms are fairly standard, many are highly negotiated and must be carefully reviewed for the effect on the PSA's terms. Certain typical defined terms are discussed throughout this Note.

Purchase and Sale of Assets

This section states that the seller agrees to sell the assets at issue and that the buyer agrees to purchase them. It also states the effective date and time of the purchase and sale. To simplify accounting issues for ongoing sales of production, the effective time is typically at a specified time (usually 7:00 a.m. local time) on the first day of a month that is on or before the closing date.

Defining the Assets and Properties

The assets the seller is conveying to the buyer may be defined in this section if not defined in the definitions section. Because a seller may not always own the entirety of a lease or other asset at issue, the parties should define the assets to distinguish between:

- **The subject interests (or assigned assets).** These are the interests being sold.
- **The assets (or properties).** These are the entire interest in the underlying assets themselves.

The subject interests being assigned sometimes include all of the seller's right, title, and interest in the assets. Sometimes the subject interests being assigned are instead specified as an undivided portion of what the seller owns, with the seller retaining the remaining portion.

The assets or properties typically include:

- **Leases.** The oil and gas leases and other mineral rights listed on an exhibit to the PSA. If the PSA covers all the seller's assets in a particular county, it is helpful to include that language in the description. For a discussion of oil and gas leases, see [Practice Note, Oil & Gas Leases: Overview](#). For a form of a Texas oil and gas lease, see [Standard Document, Oil & Gas Lease \(TX\)](#).
- **Units.** All units and pooling areas that include any portion of any of the leases.
- **Rights of ways, surface leases, and easements.** Any rights of ways, surface leases, and easements listed on an exhibit to the PSA or otherwise used or available for use in connection with any of the leases or units.
- **Wells.** All wells included on any of the leases or units. For title purposes and otherwise, the PSA often has a

schedule of wells, along with the gross working interest and net revenue interest attributable to the seller's interest being assigned in each well.

- **Hydrocarbons.** All hydrocarbons produced from the wells, and any imbalance rights of the seller, at or after the effective time.
- **Contracts.** Contracts related to the assets. These contracts sometimes:
 - are limited just to those listed on an exhibit or schedule; or
 - include any contracts related to the assets, whether or not listed on an exhibit or schedule to the PSA.
- **Miscellaneous assets like facilities, permits, and inventory.** Facilities, equipment, permits, records, software, communication infrastructure, and inventory related to the assets.
- **Other assets.** Any other assets that are specific to the transaction.

Excluded Assets

The excluded assets the seller is retaining are also defined in this section if not defined in the definitions section. Excluded assets typically include all of the seller's right, title, and interest in the following:

- Hydrocarbons, funds, credits, and refunds relating to the period before the effective time.
- Data, records, and documents subject to legal privilege or subject to third party disclosure restrictions.
- Any other assets that are specific to the transaction. These assets may include certain wells, items of equipment, contracts, or permits or a wide variety of other deal-specific items.

To avoid disputes about whether a particular asset is conveyed or retained, the parties should ensure that the definitions of assets and any defined terms within assets (like contracts or equipment) do not overlap with the definition of excluded assets. The parties can address this issue by:

- Stating that, notwithstanding anything in the definition of assets, the subject interests and assets do not include any assets defined as excluded assets. Any asset that is covered by both definitions is then deemed an excluded asset.
- Clearly excluding from defined terms like contracts or equipment any excluded assets that would, absent the excluded assets definition, be records or equipment.

Like-Kind Exchange

The parties sometimes include a provision that allows each party to assign its rights under the PSA to another party in connection with effecting a like-kind exchange under section 1031 of the Internal Revenue Code (IRC). If a party is engaging in a like-kind exchange, the other party often requires both:

- Indemnification against any claims relating to the exchange.
- Written notice of the election within a specified number of business days before the closing date. This gives the other party time to review the proposed documentation.

For more information on IRC 1031 like-kind exchanges generally, see [1031 Like-Kind Exchange of Real Estate Toolkit](#).

Purchase Price

The purchase price provision sets out the base purchase price agreed to by the parties and the mechanism for its payment, subject to any adjustments (see Purchase Price Adjustments). If the buyer is paying a deposit when the parties execute the PSA, this section describes the deposit and states if it is to be held in escrow with a third party or by the seller. If held with a third party, an escrow agreement with the escrow agent is required. For more information on escrow provisions and agreements, see:

- [Standard Clause, Purchase Agreement: Escrow Provisions](#).
- [Standard Document, Escrow Agreement](#).
- [Negotiating M&A Escrow Agreements Checklist](#).

The base purchase price is typically allocated among the assets for two purposes:

- Title and environmental defect adjustments.
- Tax purposes.

Settlement Statements

The seller usually prepares a preliminary settlement statement to determine the closing payment the buyer must make at the closing. After the closing the seller prepares a final settlement statement finalizing all adjustments at some point after the closing date, typically three to six months later. These provisions can be highly negotiated and often include:

- Procedures for the buyer's review and objection to the statements.

- Methods for resolving disputes relating to the statements.

Purchase Price Adjustments

In an oil and gas asset acquisition, purchase price adjustments typically relate to one or more of the following:

- Revenues paid to one party that belong to the other, such as revenues paid to the seller for post-effective time production.
- Expenses paid by one party that are the responsibility of the other, such as lease operating expenses.
- Imbalance adjustments.
- Suspense revenues.
- Title defect adjustments.
- Environmental defect adjustments.

The parties usually agree on the applicable accounting method, which is stated as generally accepted accounting principles (GAAP), the council of petroleum accountants societies procedures (COPAS), or both. They also decide how to attribute revenues and expenses for the time periods before and after the effective time.

For more information on purchase price adjustments generally, see [Practice Note, What's Market: Purchase Price Adjustments](#).

Buyer's Inspection

If the transaction is a non-simultaneous sign and close, the buyer is usually given a time period following the PSA's execution date to conduct a due diligence review of the assets and related records. Depending on the scope of the assets, this due diligence period may be a few weeks or several months. If the PSA is structured as a simultaneous sign and close transaction, the buyer must complete its due diligence before signing the PSA.

During the due diligence period, the seller provides the buyer reasonable access to the properties and related records. The seller often seeks to restrict the buyer's level of access. For example, it may only allow an ASTM Phase I environmental review of the properties. It also usually requires that the buyer obtain adequate insurance for its inspection and indemnify the seller and its group for losses arising out of the buyer's access, even if caused by the seller group's fault or negligence.

For more information on due diligence in M&A transactions generally, see [Practice Note, Due Diligence for Private Mergers and Acquisitions](#). For information on due diligence in oil and gas transactions, see [Upstream Oil & Gas Asset Acquisitions Due Diligence Checklist](#) and [Practice Note, Due Diligence for Upstream Asset Acquisitions](#).

Disclaimers

This section includes specific disclaimers by the seller and acknowledgments by the buyer regarding the assets. Because the parties negotiate the specific representations and warranties that are contained in the PSA, it is typical for the disclaimers section to include very broad disclaimers that waive all other express or implied warranties regarding the assets. For Texas assets, parties typically also include a waiver under the Texas Deceptive Trade Practices-Consumer Protection Act (Tex. Bus. & Com. Code Ann. §§ 17.41 to 17.63). If any assets are located in states other than Texas or if another state's law governs the PSA, the parties should include state-specific waivers.

Title Matters

The title matters section governs how the parties agree to address defects discovered during the due diligence period as to the conveyed interests' title (see Buyer's Inspection).

Defining Defensible Title

This section includes a definition of what is defensible title to the conveyed interests. The definition of defensible title is heavily negotiated because it determines what the buyer may assert as a title defect.

For example, defensible title for a particular asset may mean having record title to the leases and wells that:

- Entitles the seller to not less than a certain scheduled net revenue interest for the asset.
- Obligates the seller to bear not more than a certain scheduled working interest for the asset.

A title defect may then be defined as any lien, encumbrance, claim, defect, or objection that renders seller's title in any assets to be less than defensible title.

The definition of defensible title varies in PSAs. The parties can instead provide that defensible title is limited to a target formation or that the seller is entitled to a certain scheduled amount of net acres for each lease.

Most PSAs include a clear definition of defensible title instead of relying on a common law standard of marketable title.

Permitted Encumbrances

The parties also agree on a list of permitted encumbrances that are not title defects. Certain permitted encumbrances are standard in PSAs, such as liens for taxes or assessments not yet due or delinquent. Others are specific to the particular assets and may include:

- Certain litigation agreed to by the parties.
- Certain prior conveyances made by the seller.
- Encumbrances made by the seller and to be assumed by the buyer.

Title Defect Process

The title matters section must specify the buyer's procedure to assert title defects. A PSA generally states:

- The deadline to assert any title defects.
- The method to determine a title defect's value.
- The process to resolve any title defect disputes.

The parties commonly agree to certain thresholds, deductibles, or caps on title defects. If the value of the validly asserted title defects exceeds a certain amount, the parties may also agree to a termination right for the buyer, the seller, or both. For valid title defects that cannot be cured, the base purchase price is reduced accordingly. The parties may also agree to allow the value of interest additions discovered during the due diligence period to be added to the base purchase price.

Special Warranty of Title

The PSA may include a special warranty of title, in which the seller warrants its title to the conveyed interests solely against lawful claims brought by third persons that arise "by, through, or under" the seller's action (other than permitted encumbrances), but not otherwise. Special warranties may be limited in scope, in time, and by amount. The special warranty of title is usually the only remedy for a title defect that survives the closing.

Other Title Matters

The title matters section may also address the parties' agreement regarding:

- Any casualty loss between the execution date and the closing date.
- Preferential purchase rights that are exercised or not waived at or before closing.
- Required consents that are not obtained at or before closing. Required consents from the state or various other governmental entities are typically requested and granted only after the closing.

Environmental Matters

Like the title matters section, this section sets out:

- The procedure and deadline for the buyer to assert any defects relating to environmental matters.
- The method for determining the value of any environmental defect.
- The process for resolving any disputes regarding environmental defects.

As with title defects, the parties usually agree to certain thresholds, deductibles, or caps on environmental defects and may agree to a termination right if the value of the validly asserted environmental defects exceeds a certain amount. Sometimes the parties agree that following the closing, no remedy will be available to the buyer for matters that could have been asserted as an environmental defect during the due diligence period.

Sellers also want to include in this section certain environmental acknowledgments by the buyer regarding the use of the assets and potential hazardous substances that are known to exist in oil field operations. Buyers often agree to include these acknowledgments.

Seller Representations and Warranties

The buyer wants the seller to give very broad representations and warranties about itself and the subject interests and assets it is selling (for information on subject interests and assets, see *Defining the Assets and Property*). The seller wants to limit the coverage and scope of its representations and warranties to minimize its exposure to any breach of a representation and warranty. Sellers may limit their representations and warranties by refusing to give them on specific topics or qualifying them as to materiality, knowledge, or time period. If the seller is not the operator of any of the assets, it generally has less information about those assets and wants to limit the representations and warranties it makes as to the non-operated assets.

Seller representations and warranties negotiated as part of a PSA often include:

- Organizational representations relating to the seller. These include:
 - due organization;
 - requisite power and authority;
 - no violation of other agreements or applicable law;
 - due authorization and enforceability;
 - no liability of the buyer for brokers fees;
 - no applicable pending or threatened litigation;
 - no third party approvals required; and
 - no pending or threatened bankruptcies.
- Capital projects relating to the assets.
- Environmental matters.
- Tax matters.
- Material contracts.
- Compliance with leases.
- Abandonment of any wells located on the assets.
- Compliance with laws.
- The existence of any preferential rights and consents to assign.
- The payout status of wells.
- A schedule of the seller's bonds and permits relating to the assets.

As part of the transaction, the seller also gives the buyer disclosure schedules to the PSA. These schedules supplement certain PSA provisions, but they mostly list exceptions and other information regarding the representations and warranties. For more information on disclosure schedules, see [Practice Note, Disclosure Schedules: Mergers and Acquisitions](#) and [Standard Document, Disclosure Schedules for M&A Transactions](#).

Buyer's Representations and Warranties

The buyer's representations and warranties are more limited than those the seller makes. They are usually limited to ensuring that the buyer can close the transaction. Typical buyer representations and warranties include:

- Organizational representations relating to the buyer. These include:

- due organization;
 - requisite power and authority;
 - no violation of other agreements or applicable law;
 - due authorization and enforceability;
 - no liability of the seller for brokers fees;
 - no applicable pending or threatened litigation;
 - no third party approvals required; and
 - no pending bankruptcies.
- Securities laws.
 - The buyer has the financial resources to close the transaction without any financing contingency.

If the buyer is a foreign entity or controlled by a foreign person or entity, the buyer may make representations regarding the federal Foreign Investment Risk Review Modernization Act (FIRRMA) and whether a filing with the Committee on Foreign Investment in the US (CFIUS) is required.

Pre-Closing Covenants

This section addresses the actions the seller and buyer must or must not take between the PSA's execution date and the sale's closing date. Many of the covenants relate to the operations of the assets, with the buyer seeking protection and assurance that the seller will continue to operate the assets in the same manner until closing. For a transaction that is structured as a simultaneous sign and close, pre-closing covenants are inapplicable.

Typical pre-closing covenants of the seller include:

- Operations before closing.
- Restrictions on operations.
- Release of liens.

Where applicable, the buyer also typically makes covenants that include obtaining:

- Required bonds and other security.
- Adequate insurance.

Pre-closing covenants that typically apply to both parties include:

- Confidentiality. If the parties entered into a standalone confidentiality agreement, this covenant usually refers to that agreement.
- Cooperation in any filing required by the Hart-Scott-Rodino Act (HSR Act) or any other regulation or law.

- Any other transaction-specific actions that must be taken, including those relating to marketing, transfer of operatorship, and specific consents.

Tax Matters

This section apportions tax liability between the parties.

Property taxes are typically apportioned based on whether they are attributable to the period:

- Before the effective time, making them the seller's responsibility.
- At and after the effective time, making them the buyer's responsibility.

Severance taxes are usually allocated the same way depending on whether the hydrocarbons were produced before or after the effective time.

The buyer typically pays any transfer taxes that may apply, and the parties agree to cooperate post-closing on tax matters relating to the assets and the transaction. Some states, like Texas, do not impose transfer taxes for transfers of mineral interests. The parties should confirm whether transfer taxes apply.

The tax matters section may also include an agreed allocation schedule that allocates the base purchase price among the assigned interests for federal income tax purposes. This allocation often differs from the allocation that the parties agree to use for title defect and environmental defect purposes.

Conditions Precedent to Closing

The conditions precedent section sets out conditions that must be satisfied or waived for the seller and buyer to be required to close the transaction.

Typical conditions precedent that must be satisfied or waived before the closing to obligate the seller to close include:

- That:
 - all the buyer's representations of warranties are true and correct as of the closing;
 - the buyer has performed all covenants and agreements; and
 - the buyer has delivered to the seller a closing certificate certifying the foregoing.
- No order or law restrains or prohibits the transaction.
- Other transition-specific requirements, such as expiration of the HSR Act waiting period, specific

consents being obtained, or regulatory approval being granted.

Typical conditions precedent that must be satisfied or waived before the closing to obligate the buyer to close include:

- That:
 - all the seller’s representations of warranties are true and correct as of the closing;
 - the seller has performed all covenants and agreements; and
 - the seller has delivered to the buyer a closing certificate certifying the foregoing.
- No order or law restrains or prohibits the transaction.
- Other transition-specific requirements, such as expiration of the HSR Act waiting period, specific consents being obtained, or regulatory approval being granted.

Termination Right and Remedies

This provision states the circumstances that trigger the rights of the buyer, the seller, or both to terminate the agreement and the effects of termination.

Termination is often permitted if there:

- **Is mutual consent.** If the parties mutually consent to terminate the deal, there is likely no remedy available to either party except the return of the buyer’s deposit (if applicable).
- **Is a failure to close by the outside date.** If the closing has not occurred by a set date (often called the outside date), then either party may terminate the agreement unless the terminating party:
 - is in breach of the agreement; and
 - fails to satisfy a condition precedent because of its breach.

There is likely no remedy available to either party except the return of the buyer’s deposit (if applicable).

- **Is a failure by either party to satisfy conditions precedent.** One party’s failure to satisfy one or more conditions precedent gives the other party a termination right unless the non-failing party:
 - is in breach of the agreement; and
 - fails to satisfy a condition precedent because of its breach.

If the seller terminates under this right, it can typically retain the buyer’s deposit and may, as an alternate

option, be entitled to seek specific performance. If the buyer terminates under this right, it is typically entitled to the return of its deposit and an additional payment that either is tied to costs and expenses relating to the transaction or instead equals the amount of the deposit.

- **Are title defects, environmental defects, or casualty losses exceeding a certain amount.** If the value of the title defects, environmental defects, or casualty losses exceeds a certain amount, then either party may terminate the agreement. To trigger the termination right, all three categories can be:
 - combined together; or
 - split out if any category exceeds a set amount.

There is likely no remedy available to either party except the return of the buyer’s deposit (if applicable).

- **Is an occurrence of certain events set out in the PSA.** The PSA may include other transaction-specific events that trigger a termination right, such as certain consents not being obtained. The remedy usually depends on which party triggers the termination right, if applicable.

The parties may also agree to limit damages that are available under the agreement. Typical limitations include that no party will be liable for special, indirect, consequential, punitive, or exemplary damages, other than damages owed to a third party under the PSA’s indemnification provisions.

Closing

The closing provision sets out the closing details, including:

- The closing date, which may be a date certain or tied to satisfaction of the conditions precedent.
- The closing time.
- The closing location.
- Each party’s closing obligations.

The closing obligations typically include the buyer’s delivery of the closing payment (equaling the base purchase price less any deposit, and as further adjusted under the PSA), and each party’s delivery of the ancillary documents, including assignments, certificates, transition service agreements, licenses, notices, change of operator, letters in lieu, and any other required documents.

Sometimes the buyer’s closing deliverables also include replacement security if the seller had any bonds or other security in favor of a governmental authority or other

third party. The seller may also require the buyer to give a bond or other security in the seller's favor to ensure that the buyer complies with its plugging and abandonment (decommissioning) or other obligations.

Post-Closing Obligations

In this section the parties agree to perform certain obligations, covenants, and agreements if the transaction closes. Typical post-closing agreements include matters such as:

- **Final settlement statement.** Cooperating to prepare the final settlement statement within a certain number of days of the closing date. This section usually contains or refers to a dispute resolution process for any disagreement between the parties relating to the final settlement statement.
- **Recordations and other filings.** Addressing who is responsible for recordations and any other required filings or notices. The buyer most often has this responsibility and must promptly provide file-stamped copies to the seller.
- **Records.** The seller's delivery of records to the buyer and sometimes the buyer maintaining those records for a stated period.
- **Audits.** Assisting for a certain period of time with audits under joint operating agreements for the assets.
- **Non-solicitation.** The buyer not soliciting the seller's employees for a specified period.
- **Suspense revenues.** Administration, payment, and recoupment of suspense revenues. Suspense revenues generally include revenues that an operator or other party owes to a lessor or other third party, but is not able to pay because, for example, there is:
 - not a good address or other payment information for the payee; or
 - some dispute as to the proper payee.
- **Transaction-related matters.** Any other matters that are appropriate for the transaction, including assumption of marketing.

Liabilities and Indemnification

Liabilities

The liabilities section identifies the liabilities the buyer is assuming and the seller is retaining. The buyer typically assumes all obligations and agrees to fulfill all losses

regarding the assets from and after the effective time, including environmental liabilities and plugging and abandonment (decommissioning) obligations. Sometimes the buyer also agrees to assume some or all of these obligations before, at, and after the effective time.

The parties often carve out certain retained liabilities of the seller from the definition of the buyer's assumed liabilities. The retained liabilities are heavily negotiated but may include:

- Specified litigation.
- Personal injuries or death occurring before the closing date.
- Payments of property expense and burdens relating to the pre-effective time period.
- Taxes attributable to the seller's ownership of the assets before the effective time.
- The seller's off-site disposal of any hazardous substances before the closing date.

Indemnification

The seller usually agrees to indemnify the buyer (and often its related group) for losses relating to the retained liabilities, breaches of the seller's representations and warranties, the seller's breach of any covenants, and the excluded assets.

The buyer typically agrees to indemnify the seller (and often its related group) for losses relating to the assumed liabilities, breaches of the buyer representations and warranties, and the buyer's breach of any covenants.

The seller (and less often the buyer) may seek to limit its indemnification exposure by:

- Requiring individual claim thresholds to be met before an indemnification claim can be asserted.
- Requiring that the claims meeting the threshold also meet a deductible before any indemnification claim can be asserted.
- Limiting all indemnification claims with a liability cap usually tied to a percentage of the base purchase price.
- Limiting the survival of the party's indemnification obligations. The PSA often limits the seller's indemnification obligations to certain time periods for each category of obligations (such as retained liabilities and breach of covenant). The seller may also seek to limit the survival of its indemnification obligations regarding certain categories of representation and warranties for different time periods, with indemnification obligations

for breaches of fundamental representations surviving longer than for other representations and warranties.

This section also typically outlines the procedure for either party to assert an indemnification claim. For agreements governed by Texas law, it usually states that these indemnities apply even if the party to be indemnified was at fault or negligent or had strict liability. This ensures the agreement complies with the Texas express negligence rule that indemnity for a party's own fault or negligence must be express and conspicuous in the parties' agreement (*Dresser Indus., Inc. v. Page Petroleum, Inc.*, 853 S.W.2d 505, 508 (Tex. 2015)).

For information on indemnification provisions in acquisition agreements generally, see [Practice Notes, Indemnification Clauses in Private M&A Agreements](#) and [What's Market: Indemnification Provisions in Acquisition Agreements](#).

Miscellaneous

The miscellaneous section includes provisions that are common in commercial contracts. Although many consider these provisions to be boilerplate, the parties must carefully review these provisions to determine their applicability and effects on the parties and the transaction.

Typical miscellaneous provisions include:

- Allocation of expenses (with the buyer typically being responsible for any filing or recordation costs).
- Notice provisions.
- Requirements for amending the agreement.
- Effect of a party's waiver of a claim, right, or remedy under the agreement.
- Any limitations on assignment of the agreement and the assets.
- Any limitations on either party's ability to make press releases or public announcements related to the transaction.
- The agreed to governing law, venue for disputes, and dispute resolution mechanism, a waiver of trial by jury, and possibly permitting specific performance.

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- Effect of counterpart and electronic signatures.
- Entire agreement (also known as the merger or integration clause) and binding effect provision.
- No third-party beneficiary provision (except as to indemnity).
- Time is of the essence provision.
- Statements that the parties are not in a partnership and do not owe each other fiduciary duties.
- If there are multiple seller or buyer parties, addressing whether obligations are joint, several, or joint and several.
- Depending on the parties' ownership structure, a provision restricting the availability of any recourse under the agreement reaching owners, members, shareholders, directors, or managers.
- General contractual interpretation provision.

For examples of standard miscellaneous provisions, see [Standard Clauses, Boilerplate Clauses](#).

Exhibits and Schedules

PSAs have numerous exhibits and schedules. The exhibits typically include the lists of leases, mineral rights, wells, contracts, and other relevant assets. They also include agreed forms of the agreements, certificates, and other documents the parties must deliver at closing, including:

- The document transferring the assets, which is usually called an assignment, bill of sale, and conveyance.
- The closing certificates.
- A certificate from the seller certifying its non-foreign status for purposes of the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). For an example of a FIRPTA certificate, see [Standard Document, Stock Purchase Agreement: FIRPTA Certificates from US Stockholders](#).
- A transition services agreement, if applicable. For an example of a general form of transition services agreement (not specific to the oil and gas industry), see [Standard Document, Transition Services Agreement](#).
- Any other agreements, certificates, licenses, or other documents required to transfer the assets.

The schedules set out particular information and often qualify the representations and warranties. Each party should closely review all schedules to ensure it is aware of all matters listed on the schedules.